

## Pension Benefit Guaranty Corporation

## § 4221.4

against which a plan sponsor has made a demand for payment of withdrawal liability pursuant to section 4219(b)(1) of ERISA.

*Party or parties* means the employer and the plan sponsor involved in a withdrawal liability dispute.

*Withdrawal liability dispute* means a dispute described in § 4221.1(a) of this chapter.

### § 4221.3 Initiation of arbitration.

(a) *Time limits—in general.* Arbitration of a withdrawal liability dispute may be initiated within the time limits described in section 4221(a)(1) of ERISA.

(b) *Waiver or extension of time limits.* Arbitration shall be initiated in accordance with this section, notwithstanding any inconsistent provision of any agreement entered into by the parties before the date on which the employer received notice of the plan's assessment of withdrawal liability. The parties may, however, agree at any time to waive or extend the time limits for initiating arbitration.

(c) *Establishment of timeliness of initiation.* A party that unilaterally initiates arbitration is responsible for establishing that the notice of initiation of arbitration was timely received by the other party. If arbitration is initiated by agreement of the parties, the date on which the agreement to arbitrate was executed establishes whether the arbitration was timely initiated.

(d) *Contents of agreement or notice.* If the employer initiates arbitration, it shall include in the notice of initiation a statement that it disputes the plan sponsor's determination of its withdrawal liability and is initiating arbitration. A copy of the demand for withdrawal liability and any request for reconsideration, and the response thereto, shall be attached to the notice. If a party other than an employer initiates arbitration, it shall include in the notice a statement that it is initiating arbitration and a brief description of the questions on which arbitration is sought. If arbitration is initiated by agreement, the agreement shall include a brief description of the questions submitted to arbitration. In no case is compliance with formal rules of pleading required.

(e) *Effect of deficient agreement or notice.* If a party fails to object promptly in writing to deficiencies in an initiation agreement or a notice of initiation of arbitration, it waives its right to object.

### § 4221.4 Appointment of the arbitrator.

(a) *Appointment of and acceptance by arbitrator.* The parties shall select the arbitrator within 45 days after the arbitration is initiated, or within such other period as is mutually agreed after the initiation of arbitration, and shall mail to the designated arbitrator a notice of his or her appointment. The notice of appointment shall include a copy of the notice or agreement initiating arbitration, a statement that the arbitration is to be conducted in accordance with this part, and a request for a written acceptance by the arbitrator. The arbitrator's appointment becomes effective upon his or her written acceptance, stating his or her availability to serve and making any disclosures required by paragraph (b) of this section. If the arbitrator does not accept in writing within 15 days after the notice of appointment is mailed or delivered to him or her, he or she is deemed to have declined to act, and the parties shall select a new arbitrator in accordance with paragraph (d) of this section.

(b) *Disclosure by arbitrator and disqualification.* Upon accepting the appointment, the arbitrator shall disclose to the parties any circumstances likely to affect his or her impartiality, including any bias or any financial or personal interest in the result of the arbitration and any past or present relationship with the parties or their counsel. If any party determines that the arbitrator should be disqualified because of the information disclosed, that party shall notify all other parties and the arbitrator no later than 10 days after the arbitrator makes the disclosure required by this paragraph (but in no event later than the commencement of the hearing under § 4221.6). The arbitrator shall then withdraw, and the parties shall select another arbitrator in accordance with paragraph (d) of this section.

(c) *Challenge and withdrawal.* After the arbitrator has been selected, a